

**Minutes**  
**Air Pollution Control Board**  
Indiana Government Center South  
Conference Room C  
402 West Washington Street  
Indianapolis, Indiana

**June 6, 2001**  
1:04 p.m.

1. Mr. John Walker, Chairman, called the meeting to order. He noted that a quorum was present.

**CALL TO ORDER**  
**QUORUM**

2. Chairman Walker introduced the board members.

**INTRODUCTION OF**  
**MEMBERS**

**Present:** Mr. John Walker, Chairman  
Mr. Thomas Anderson  
Dr. Phil Stevens  
Mr. Randy Staley  
Dr. James Miner  
Mr. Marlow Harmon  
Mr. David Benshoof  
Mr. Chris Horn  
Ms. Melanie Solmos, Proxy, Lieutenant Governor  
Mr. John Bacone, Proxy, Department of Natural Resources  
Mr. Howard Cundiff, Proxy, State Board of Health

Also present were Ms. Lori Kaplan, Commissioner; Ms. Rachel McGeever, Legal Counsel; Timothy Method, Deputy Commissioner; and Ms. Janet McCabe, Assistant Commissioner. Others are recorded on a separate sheet and made a part of this record. A court reporter was present and a transcript is available for review.

Commissioner Kaplan stressed the importance of the nitrogen oxides state implementation plan rule that is being addressed today.

3. Chairman Walker introduced the February 7, 2001 Air Pollution Control Board minutes.

**MINUTES**

Mr. Harmon moved to adopt the February 7, 2001 Air Pollution Control Board Minutes. Mr. Horn seconded. The motion passed unanimously.

Chairman Walker introduced the March 7, 2001 Air Pollution Control Board minutes.

Mr. Horn moved to adopt the March 7, 2001 Air Pollution Control Board Minutes. Dr. Miner seconded. The motion passed unanimously.

4. Chairman Walker introduced Exhibit 1-A, the rule as preliminary adopted, and Exhibit 1-B, the rule as preliminarily adopted and proposed for final adoption with suggested changes, 326 IAC 10-3 Nitrogen Oxide Reduction Program for Specific Source Categories, and 326 IAC 10-4 Nitrogen Oxide Budget Trading Program and Amendments to the Emission Offset Rules 326 IAC 2-3-1, Definitions; 326 IAC 2-3-2, Applicability; and 326 IAC 2-3-3, Applicable Requirements, into the record of the hearing.

Ms. McCabe gave a presentation regarding the NO<sub>x</sub> rule focusing on IDEM's recommended changes to the rule that the board preliminarily adopted and asked the board to final adopt the rule. Ms. McCabe stated that during her almost ten years of working with IDEM that this was the most clearly significant rule that she has worked on in terms of reduction of air pollution and improvement to public health. There are two federal deadlines that IDEM is working under in order to get this rule completed. One deadline is that established by the federal court for states to adopt the Federal NO<sub>x</sub> SIP Call (October 2000). The second deadline comes from the requirement that Indiana complete a plan to attain the ozone standard in northwest Indiana. This deadline is also past due. IDEM has submitted the attainment plan to EPA which is complete except for the completion of this rule. She also stated that it is IDEM's opinion that it is much better for Indiana to have its own NO<sub>x</sub> rule in place than to have the federal NO<sub>x</sub> rule imposed by EPA.

Ms. McCabe acknowledged the following IDEM staff members who worked on the NO<sub>x</sub> rule: Roger Letterman, Shri Harsha, Jean Beauchamp, Rebecca Mason, and Dan Hancock. A special acknowledgment went to Phil Powlick with the Department of Commerce, Office of Energy.

**PUBLIC HEARING  
FOR FINAL  
ADOPTION OF  
RULE 326 IAC 10-3,  
Nitrogen Oxide  
Reduction Program for  
Specific Source  
Categories, and 326  
IAC 10-4, Nitrogen  
Oxide Budget Trading  
Program and  
Amendments to the  
Emission Offset Rules,  
326 IAC 2-3-1,  
Definitions; 326 IAC 2-  
3-2, Applicability; and  
326 IAC 2-3-3,  
Applicable  
Requirements**

Ms. McCabe's presentation on the NOx rule covered the following items:

- Four Principles for a balanced rule: Achieve required NOx reductions;  
Be approvable by US EPA;  
Keep costs low ;  
Encourage (or not discourage) a clean and reliable energy supply for Indiana.
- The rule, with the department's recommended changes, will support a reliable and increasingly clean energy supply in Indiana.
- Elements of the rule that promote reliability of energy supply.
- Elements that support construction of new sources.
- Elements that ensure reliability for existing sources.
- Elements that promote clean energy.

Other issues addressed:

Section 126 transition;  
On-site record retention;  
Penalty provisions;  
Pollution control project exemption;  
Incorporation of NOx waiver for sources of NOx in Lake and Porter Counties;  
Compliance date;  
Compliance supplement pool;  
Issues specific to Inland Steel.

The rule: Achieves environmental goals;  
Meets federal requirements;  
Balances the various needs, costs, and reliability of new energy and existing energy in a way that is a good mix and a good balance.

Ms. McCabe asked the board to adopt the changes that the department recommended to the NOx rule and then final adopt the NOx rule.

Mr. Patrick Dal Porto, representing Indiana Michigan Power doing business in Indiana as American Electric Power (AEP), distributed to the board members a handout with suggested language as a new Section 16 to the rule prior to final adoption. He stated that AEP supports a great portion of the changes to the rule. Mr. Dal Porto expressed concerns with Section 126 as it regards the NOx allowance budget; namely, the number of allowances allocated to each state for issuance to its sources. The language would automatically adjust the allowances allocations upward, using the formula for distribution contained in the rule, if U.S. EPA increased Indiana's NOx budget for utilities in the future.

Mr. Tim Maloney, Executive Director of the Hoosier Environmental Council, submitted a handout to the board and stated that the Hoosier Environmental Council strongly supported final adoption of the NOx rule for three reasons: 1) The rule will provide for significant benefit to public health by reducing nitrogen oxide air pollution; 2) The clean energy or energy efficiency and renewable energy incentive program in the rule will provide for long-term pollution reductions across the board while stimulating investment and economic development in cleaner energy technologies and practices; and 3) The rule is long overdue. Mr. Maloney asked the board to proceed with final adoption of the rule as it is currently written.

Mr. Bill Hayden, Chairman of the Government Affairs Committee of the Indiana Division of the IZAAK Walton League, expressed support for the rule and urged the board to final adopt the rule as it is written.

Mr. Darrell Bayless, Air Quality Manager for Hoosier Energy (which is the Rural Electric Cooperatives, Inc.), requested that IDEM modify its criteria for requesting allowance allocations for new sources under 326 IAC 10-4-9, to limit the simple cycle systems to 35 percent of the maximum design input for the ozone season rather than 25 percent. This modification would allow simple cycle peaking facilities to request a sufficient number of allowances to possibly meet the project needs.

Mr. Glenn Pratt, Executive Committee member of the Hoosier Chapter of the Sierra Club, expressed strong support for IDEM's actions taken to final adopt the NOx rule. Mr. Pratt stated his belief that it would be more appropriate to go to a 5 percent clean energy set-aside because this would give the incentive to not only address human health issues but to move to a much more competitive long-term position worldwide with industries.

Mr. Don Fulkerson, Environmental Affairs Director for Indiana-Kentucky Electric Corporation (IKEC), provided handouts for the board members. Mr. Fulkerson supported the comments presented by American Electric Power Corporation and comments to be made by the Indiana Electric Utility Air Work Group. IKEC did not object to the specifics of the rule in the form that it has been presented to the board, however they expressed concern over the following issues: the manner in which the rulemaking was conducted in that the rule presented today was never made available for an official comment period; that IDEM did not, in all cases, allow sufficient time for full consideration of all innovative and reasonable comments; and that IDEM was too quick to reject proposals on the basis that EPA would not approve them. IKEC would object to the rule if the language related to the Section 126 petition at 326 IAC 10-4-1 (c) were removed, that is the language that provides an automatic mechanism in the rule by which companies can petition for the adjusted compliance date if the dates of the SIP Call in the 126 action are harmonized. In addition, IKEC requested that the rule be modified to include a provision that allows the overall statewide emissions budget to be increased

immediately without additional rulemaking if EPA or a court determines that the state cap should be increased. Mr. Fulkerson requested that the board direct IDEM to continue to work with EPA to encourage EPA to harmonize the Section 126 compliance dates and the NOx SIP Call compliance date.

Mr. John Endress, Project Manager for a proposed coal-fired generating station being constructed in Pike County, Indiana, by EnviroPower, issued handouts to the board. EnviroPower comments were directed at the provisions of the rule that relate to the new source set-aside provisions including: the extension of the 5% set-aside level for six years rather than for the first three years; the ability to enter the existing source allocation program with a single year of operating data; and the use of different multiples for new source allocations for units designed to provide base load versus peaking generating capacity. Mr. Endress supported the concept of providing incentives for energy efficient units in the allocation formula. Mr. Endress expressed concern regarding adequate time to fully evaluate the specifics in the modified rule including the types of fuels identified and the associated efficiency thresholds. Mr. Endress stated that if the rule was final adopted, EnviroPower would request that issues be studied further and that recommendations for appropriate rule amendments be brought to the board at a future date. He also stated that if the rule was not final adopted, that EnviroPower would appreciate the opportunity to continue to work with IDEM to further evaluate issues. Mr. Endress expressed continued concern that new sources will be required to rely on allocations from the new source set-aside for several years after construction. EnviroPower supported a one or two-year allocation three years in advance.

Mr. Jim Carson, representing ISPAT Inland, did not object to the finalization of the rule based on the agreement that Ms. Janet McCabe detailed in her presentation to the board and the agreement to pursue, hopefully to mutual satisfaction, the issues that potentially could curtail operating flexibility at the Harbor Works.

Mr. John Blair, representing Valley Watch, stated support of the rule as it is without any changes that were suggested by those who commented before him.

Mr. Greg Kunkel, representing Tenaska, stated that whatever the rules are that they should be the same for all competitors in the electric industry. Mr. Kunkel supported the rule as it is written.

Mr. Mark Strimbu, representing the Indiana Electric Utility Air Work Group, distributed handouts to the board members. He expressed concern that IDEM has not been receptive to some innovative proposals that would add flexibility and efficiency to the rule without sacrificing any of the environmental benefits. He expressed concern about the manner in which the rulemaking was conducted. He stated that it is too soon to make any categorical statements about what the new administration will or will not approve. In order to improve rulemakings in the future, Mr. Strimbu requested that the board instruct

IDEM, for future rulemakings, to aggressively seek to minimize costs, to maximize flexibility for the regulated community without forsaking environmental benefits, to provide sufficient time for full consideration of any proposed rulemaking, and to stand up to EPA for ideas that make common sense. Mr. Strimbu request the board to delay final adoption of the rule pending the resolution of four items: 1) The final rule should retain the language in 326 IAC 10-4-1(c) allowing sources subject to the Section 126 rule to petition for and receive an extension of the May 1, 2004 compliance deadline in the rule in the event that the EPA takes action to harmonize the deadlines in the Section 126 and NOx SIP Call; 2) IDEM should continue working with EPA in an effort to make the deadline for the Section 126 rule consistent with the deadline for the NOx SIP Call; 3) It does not make sense for EPA and the state to implement two separate regulatory programs to control the same sources for the pollutant for the same purpose; and 4) The final rule should contain language providing that if, in the response to current litigation over the SIP Call budgets, EPA takes action to increase the budget for Indiana on an individual source, then the source should be allowed to petition IDEM and IDEM should grant the corresponding allowance increase to the rule. Mr. Strimbu recommended that state budgets currently are in some doubt and sources should get the benefit of any budget increases without any delay due to this rule.

Ms. Emily Fleschner, Clean Air Action Corporation, stated that Indiana has reason to be concerned that many of IDEM's regulated sources are going to have a difficult time meeting the 2004 deadline and doing it cost-effectively. However, the Clean Air Action Corporation does not believe there is any reason that they shouldn't be in compliance.

Mr. John Ross, Manager of Environmental Permits for the Environmental Health and Safety Department at NiSource, commented on the fast pace of the rule development process. During the February 7, 2001 board meeting NiSource submitted comments on the potential rule that clean energy or highly efficient electric generation could provide in reducing NOx emissions, as well as the collateral benefits for reduction of multiple pollutants. At that time, NiSource felt the language in the preliminarily adopted rule put clean energy projects at a disadvantage as compared to the installation of end of the pipe NOx control devices, such as selective catalytic reduction or SCR. In today's version of the rule, IDEM addressed this issue by adding provisions under 326 IAC 10-4-9 (b) and (e) that can reward certain projects that achieve specified energy efficiency levels. Mr. Ross expressed concerns that the rule, which includes thresholds that are extremely challenging, may prevent companies hoping to qualify for NOx allowances from attempting those types of projects due to significant risk of failure of meeting the threshold. He expressed concern that the proposed energy efficiency levels are difficult to achieve, and that the entire amount is totally contingent upon meeting the rate energy efficiency levels. He stated no other provision in the NOx rule appears to be as restrictive as that section and that IDEM wants to make this provision a technology forcing measure. More realistic threshold levels and/or a graduated reward structure would be an improved approach for the rule and he stated that improvements can still be made to the rule. If the

board believes that the rule should contain a stronger incentive to diversify Indiana's fuel mix and help provide a method that could provide Indiana with additional environmental benefits beyond NOx, then NiSource urged the board to provide a means to complete the provisions of this section of the rule.

Ms. Christa Russell, Environmental Director for Lone Star Cement Company, also speaking on behalf of Lehigh Cement Company and Essrock Cement Company, supported the rule language regarding pollution control projects. Ms. Russell requested a change to the rule that references a federal document that EPA put together in 2000. This document is still under revision between the industry and EPA. Ms. Russell stated that Lone Star Cement would like to see the rule reverted back to the document that was referenced in the preliminarily adopted rule which is the 1994 ACT document.

Mr. Grant Smith, Utility and Environmental Policy Coordinator for Citizen's Action Coalition, expressed support for the Hoosier Environmental Council comments.

Mr. Jim Alexander, U.S. Steel Gary Works, supported the final adoption of the rules and amendments as proposed.

Mr. Steve Loeschner, Fort Wayne citizen, stated that the word "clean" should be stricken from the rule wherever it appears prior to the word "coal". He also asked: that the rule not be limited to only the ozone season; that whenever pollution control is installed, it be utilized to the best available ability of the person who purchased it; and that it should be required. He supported adoption of the rule, but said that there should be a number of amendments adopted with the rule.

Dr. Miner moved to adopt the amendments to rules 326 IAC 10-3, 326 IAC 4, 326 IAC 2-3-1, 326 IAC 2-3-2, and 326 IAC 2-3-3. Mr. Anderson seconded the motion. The motion passed unanimously.

Mr. Harmon moved to final adopt rules 326 IAC 10-3, 326 IAC 4, 326 IAC 2-3-1, 326 IAC 2-3-2, and 326 IAC 2-3-3 as amended. Mr. Anderson seconded the motion. The motion passed 11-0.

5. Chairman Walker introduced Exhibit 2, draft rules 326 IAC 1, and 326 IAC 2, Title V and Prevention of Significant Deterioration (PSD) Permitting Rules and Changes to Permit Exemptions, into the record of the hearing.

**PUBLIC HEARING  
FOR  
PRELIMINARY  
ADOPTION OF  
AMENDMENTS TO  
RULE 326 IAC 1  
AND 326 IAC 2,  
Concerning Title V  
and Prevention of  
Significant  
Deterioration  
Permitting Rules and  
Changes to Permit  
Exemptions**

Mr. Paul Dubenetzky, Permit Section of the Office of Air Quality, informed the board of five items that are addressed by this rulemaking. 1) House Rule 1343, adopted two sessions ago, directed the board to delete "potential to emit" as a criteria for exempting specific types of operations listed in the exemptions under IDEM's various permit provisions unless prohibited by federal law. The statutory deadline to make these rule changes is January 1, 2002. 2) Fixups to the PSD rule that the board final adopted in December, 2000 that need to be made to: reconcile apparently minor differences in the wording of the federal requirement for state implementation plans; add additional requirements for Class I areas; require EPA to approve exclusions to increment consumption; include specific requirements to notify EPA of permit actions; and delete "total suspended particulate matter" from the requirement to demonstrate attainment with the national ambient air quality standards and with increments since both of these have been replaced by the PM10 increment. 3) The term "federally enforceable" was retained within the PSD rule at the time of its final adoption. Mr. Dubenetzky committed to continue working with EPA to insure approvability of the rule and future amendments for a new source review program if IDEM deleted the term. Since final adoption of the PSD rule EPA has agreed with the findings. Mr. Dubenetzky recommended that the board delete the term "federally" from "federally enforceable" as it is used in definition of "potential to emit." 4) EPA entered into a settlement with environmentalists to take final action on fully approving state Title V programs. Amendments were submitted in 1996, addressing two previously identified deficiencies in IDEM's Title V program. Since that time, a number of other changes have been made to the rules. As part of the settlement, EPA agreed to hold a national comment period on the adequacy of state Title V programs. EPA plans to issue Notice of Deficiencies to states by April, 2002. This rulemaking is intended to anticipate and avoid any future notice of deficiencies and keep the Title program fully approved. 5) The status of previously issued new source review permits became an issue once IDEM began implementing the Title V program. IDEM agreed with permittees that new operating permits should supercede previously issued permits. EPA believes that there are problems with the Title V program's authority to independently keep those requirements in force. This rule contains language that insures that the requirements of previously issued conditions remain in place after the original permit expires until specifically deleted or modified by subsequent permit action.

Mr. Tony Sullivan, Barnes and Thornburg, representing Indiana Electric Utility Air Work Group (IEUAWG), said that they would like more time to review this rule. Mr. Sullivan asked to meet with IDEM and discuss wording changes to the rule before preliminary adoption.

Mr. Bernie Paul, Eli Lilly, stated that it is a benefit to the state that IDEM has full authority over these programs. He raised the following concerns: the concept in the general provisions of the permit rules dealing with exemptions from preconstruction permit requirements; the concept of insignificant activities within the Title V program;



the numbers for the insignificant activities are different from the numbers for the exemption list in the preconstruction program, causing confusion; and, the change to the emergency defense.

Mr. Anderson moved to preliminary adopt the amendments to rule 326 IAC 1 and 326 IAC 2. Mr. Staley seconded the motion. The motion passed unanimously.

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| 6  | Chairman Walker informed the board of Ms. Rachel McGeever's resignation and thanked her for her guidance and assistance in legal matters that were presented before the air pollution control board. | <b>RESIGNATIONS</b> |
| 7. | The next meeting was tentatively scheduled for August 1, 2001, at 1:00 p.m., in the Government Center South, Conference Room C Indianapolis, Indiana.  | <b>NEXT MEETING</b> |
| 8. | Chairman Walker adjourned the meeting at 4:14 p.m.   | <b>ADJOURNMENT</b>  |

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John Walker, Chairman

*These minutes were taken from the June 6, 2001 transcript, and were written on June 29 , 2001, by Karol T. Chuma, Office of Air Quality.*